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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 MICHAEL J DELEGANS,

8 Plaintiff,

9 v.

10 COMMISSIONER OF SOCIAL  
11 SECURITY,

12 Defendant.

No. 2:16-CV-00070-RHW

**ORDER GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

13 Before the Court are the parties' cross-motions for summary judgment, ECF  
14 Nos. 16 & 22. Mr. Delegans brings this action seeking judicial review, pursuant to  
15 42 U.S.C. § 405(g), of the Commissioner's final decision, which denied his  
16 application for Disability Insurance Benefits under Title II and his application for  
17 Supplemental Security Income under Title XVI of the Social Security Act, 42  
18 U.S.C §§ 401-434, 1381-1383F. After reviewing the administrative record and  
19 briefs filed by the parties, the Court is now fully informed. For the reasons set forth  
20 below, the Court **GRANTS** Defendant's Motion for Summary Judgment and  
**DENIES** Mr. Delegans' Motion for Summary Judgment.

**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT ~ 1**

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## I. Jurisdiction

Mr. Delegans filed his applications for Disability Insurance Benefits and Supplemental Security Income on February 4, 2009. AR 21, 164-73, 576. His alleged onset date in his applications is January 1, 2009 (AR 21, 164-73); the amended alleged onset date is December 1, 2007 (AR 21, 54, 577, 700). Mr. Delegans' applications were initially denied on April 30, 2009, AR 85-88, and on reconsideration on August 7, 2009, AR 93-104. A hearing with Administrative Law Judge ("ALJ") Stephanie Martz occurred on September 8, 2010. AR 43-79. On October 12, 2010, the ALJ issued a decision finding Mr. Delegans ineligible for disability benefits. AR 18-34. The Appeals Council denied Mr. Delegans' request for review on November 21, 2011, AR 1-4.

After the Appeals Council denied his request for review, Mr. Delegans filed a Complaint in Federal District Court, and the Court affirmed the ALJ decision.<sup>1</sup> Mr. Delegans filed a Notice of Appeal, and on July 10, 2014, the Ninth Circuit issued a memorandum decision remanding the claims for a new hearing. AR 800-11. The Ninth Circuit determined that the ALJ's decision failed to provide clear and convincing reasons to discredit Mr. Delegans regarding only his mental limitations, and failed to provide specific and legitimate reasons to discredit the

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<sup>1</sup> The district court decision is missing from the record. *See* AR 643.

1 contradicted opinions of Drs. Halley, Kenderdine, and Widlan only regarding Mr.  
2 Delegans' mental limitations. *Id.*

3 While the appeal of the first ALJ decision was pending, Mr. Delegans filed a  
4 subsequent application for Disability Insurance Benefits on August 10, 2011 (AR  
5 1161-67, 576), and a subsequent application for Supplemental Security Income on  
6 June 10, 2011 (AR 1155-60, 576). On May 21, 2013, ALJ Virginia M. Robinson  
7 issued a decision finding Mr. Delegans ineligible for disability benefits. AR 776-  
8 94. On February 10, 2015, the Appeals Council determined that the prior ALJ  
9 mistakenly found that the October 2010 decision was administratively final. AR  
10 821-24. The Appeals Council found "good cause" to reopen the subsequent  
11 applications, vacated the May 21, 2013 ALJ decision, and consolidated the 2009  
12 and 2011 claims. *Id.*

13 A new hearing with ALJ Marie Palachuk occurred on October 21, 2015. AR  
14 695-747. On November 20, 2015, the ALJ issued a decision finding Mr. Delegans  
15 ineligible for disability benefits. AR 573-96. Because the Appeals Council did not  
16 assume jurisdiction, the decision of the ALJ became final, *see* 20 C.F.R. §  
17 404.984(d), and Mr. Delegans filed his current Complaint in District Court on  
18 March 22, 2016 (ECF No. 5), pursuant to 42 U.S.C. § 405(g).

## II. Sequential Evaluation Process

The Social Security Act defines disability as the “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A claimant shall be determined to be under a disability only if the claimant’s impairments are of such severity that the claimant is not only unable to do his previous work, but cannot, considering claimant's age, education, and work experience, engage in any other substantial gainful work that exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A) & 1382c(a)(3)(B).

The Commissioner has established a five-step sequential evaluation process for determining whether a claimant is disabled within the meaning of the Social Security Act. 20 C.F.R. §§ 404.1520(a)(4) & 416.920(a)(4); *Lounsbury v. Barnhart*, 468 F.3d 1111, 1114 (9th Cir. 2006).

Step one inquires whether the claimant is presently engaged in “substantial gainful activity.” 20 C.F.R. §§ 404.1520(b) & 416.920(b). Substantial gainful activity is defined as significant physical or mental activities done or usually done for profit. 20 C.F.R. §§ 404.1572 & 416.972. If the claimant is engaged in

1 substantial activity, he or she is not entitled to disability benefits. 20 C.F.R. §§  
2 404.1571 & 416.920(b). If not, the ALJ proceeds to step two.

3 Step two asks whether the claimant has a severe impairment, or combination  
4 of impairments, that significantly limits the claimant's physical or mental ability to  
5 do basic work activities. 20 C.F.R. §§ 404.1520(c) & 416.920(c). A severe  
6 impairment is one that has lasted or is expected to last for at least twelve months,  
7 and must be proven by objective medical evidence. 20 C.F.R. §§ 404.1508-09 &  
8 416.908-09. If the claimant does not have a severe impairment, or combination of  
9 impairments, the disability claim is denied, and no further evaluative steps are  
10 required. Otherwise, the evaluation proceeds to the third step.

11 Step three involves a determination of whether any of the claimant's severe  
12 impairments "meets or equals" one of the listed impairments acknowledged by the  
13 Commissioner to be sufficiently severe as to preclude substantial gainful activity.  
14 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526 & 416.920(d), 416.925, 416.926;  
15 20 C.F.R. § 404 Subpt. P. App. 1 ("the Listings"). If the impairment meets or  
16 equals one of the listed impairments, the claimant is *per se* disabled and qualifies  
17 for benefits. *Id.* If the claimant is not *per se* disabled, the evaluation proceeds to the  
18 fourth step.

19 Step four examines whether the claimant's residual functional capacity  
20 enables the claimant to perform past relevant work. 20 C.F.R. §§ 404.1520(e)-(f) &

1 416.920(e)-(f). If the claimant can still perform past relevant work, the claimant is  
2 not entitled to disability benefits and the inquiry ends. *Id.*

3 Step five shifts the burden to the Commissioner to prove that the claimant is  
4 able to perform other work in the national economy, taking into account the  
5 claimant's age, education, and work experience. *See* 20 C.F.R. §§ 404.1512(f),  
6 404.1520(g), 404.1560(c) & 416.912(f), 416.920(g), 416.960(c). To meet this  
7 burden, the Commissioner must establish that (1) the claimant is capable of  
8 performing other work; and (2) such work exists in "significant numbers in the  
9 national economy." 20 C.F.R. §§ 404.1560(c)(2); 416.960(c)(2); *Beltran v. Astrue*,  
10 676 F.3d 1203, 1206 (9th Cir. 2012).

### 11 **III. Standard of Review**

12 A district court's review of a final decision of the Commissioner is governed  
13 by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited, and the  
14 Commissioner's decision will be disturbed "only if it is not supported by  
15 substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1144,  
16 1158-59 (9th Cir. 2012) (citing § 405(g)). Substantial evidence means "more than a  
17 mere scintilla but less than a preponderance; it is such relevant evidence as a  
18 reasonable mind might accept as adequate to support a conclusion." *Sandathe v.*  
19 *Chater*, 108 F.3d 978, 980 (9th Cir.1997) (quoting *Andrews v. Shalala*, 53 F.3d  
20 1035, 1039 (9th Cir. 1995)) (internal quotation marks omitted). In determining

1 whether the Commissioner’s findings are supported by substantial evidence, “a  
2 reviewing court must consider the entire record as a whole and may not affirm  
3 simply by isolating a specific quantum of supporting evidence.” *Robbins v. Soc.*  
4 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (quoting *Hammock v. Bowen*, 879  
5 F.2d 498, 501 (9th Cir. 1989)).

6 In reviewing a denial of benefits, a district court may not substitute its  
7 judgment for that of the ALJ. *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir.  
8 1992). If the evidence in the record “is susceptible to more than one rational  
9 interpretation, [the court] must uphold the ALJ's findings if they are supported by  
10 inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104,  
11 1111 (9th Cir. 2012); *see also Thomas v. Barnhart*, 278 F.3d 947, 954 (9<sup>th</sup> Cir.  
12 2002) (if the “evidence is susceptible to more than one rational interpretation, one  
13 of which supports the ALJ’s decision, the conclusion must be upheld”). Moreover,  
14 a district court “may not reverse an ALJ's decision on account of an error that is  
15 harmless.” *Molina*, 674 F.3d at 1111. An error is harmless “where it is  
16 inconsequential to the [ALJ's] ultimate nondisability determination.” *Id.* at 1115.  
17 The burden of showing that an error is harmful generally falls upon the party  
18 appealing the ALJ's decision. *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

1 **IV. Statement of Facts**

2 The facts of the case are set forth in detail in the transcript of proceedings  
3 and only briefly summarized here. Mr. Delegans was 35 years old at the amended  
4 alleged date of onset. AR 21, 164, 167, 595. He has at least a high school  
5 education. AR 33, 595. Mr. Delegans is able to communicate in English. AR 33,  
6 595. Mr. Delegans previously worked as a household appliance installer, auto parts  
7 deliverer, and automobile wrecker. AR 32, 196, 595. Mr. Delegans has a history of  
8 cannabis abuse. AR 579.

9 **V. The ALJ's Findings**

10 The ALJ determined that Mr. Delegans was not under a disability within the  
11 meaning of the Act from the amended alleged onset date of December 1, 2007,  
12 through the date of the ALJ's decision. AR 577, 596.

13 **At step one**, the ALJ found that Mr. Delegans had not engaged in substantial  
14 gainful activity since December 1, 2007 (citing 20 C.F.R. §§ 404.1571 et seq. &  
15 416.971 et seq.). AR 579.

16 **At step two**, the ALJ found Mr. Delegans had the following severe  
17 impairments: ulcerative colitis, disorder of parathyroid gland, pancreatitis with  
18 pseudo cyst, affective disorder, personality disorder, pain disorder due to general  
19 medical condition, anxiety disorder, and cannabis abuse (citing 20 C.F.R. §§  
20 404.1520(c) & 416.920(c)). AR 579.



1       At **step three**, the ALJ found that Mr. Delegans did not have an impairment  
2 or combination of impairments that meets or medically equals the severity of one  
3 of the listed impairments in 20 C.F.R. § 404, Subpt. P, App. 1. AR 582.

4       **At step four**, the ALJ found Mr. Delegans had the residual functional  
5 capacity to perform light work with these limitations: (1) he can perform postural  
6 activities frequently except he should never climb ladders, or ropes, or scaffolds;  
7 (2) he can frequently handle and finger bilaterally; (3) he should avoid  
8 concentrated exposure to extreme temperatures, vibrations, and hazards; (4) he  
9 needs ready access to a bathroom, yet even with these unscheduled breaks, he  
10 would not be off task over 10 percent of the day; (5) he is able to understand,  
11 remember, and carry out simple routine tasks in a predictable routine environment  
12 with minimal changes in routine; (6) he is able to perform work requiring minimal  
13 and simple judgment and decision making; and (7) he can have only brief and  
14 minimal interactions with the public. AR 583.

15       The ALJ determined that Mr. Delegans is unable to perform any past  
16 relevant work. AR 595.

17       **At step five**, the ALJ found that, in light of his age, education, work  
18 experience, and residual functional capacity, in conjunction with the Medical-  
19 Vocational Guidelines, there are jobs that exist in significant numbers in the  
20 national economy that he can perform. AR 595.

## VI. Issues for Review

Mr. Delegans argues that the Commissioner's decision is not free of legal error and not supported by substantial evidence. Specifically, he argues the ALJ erred by: (1) improperly assessing Mr. Delegans' subjective complaint testimony credibility; (2) improperly evaluating the lay witness evidence; (3); improperly considering and weighing the medical opinion evidence; and (4) improperly assessing Mr. Delegans' residual functional capacity, and failing to identify jobs, available in significant numbers, that Mr. Delegans could perform despite his functional limitations.

## VII. Discussion

### A. The ALJ Properly Discounted Mr. Delegans' Credibility.

An ALJ engages in a two-step analysis to determine whether a claimant's testimony regarding subjective symptoms is credible. *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008). First, the claimant must produce objective medical evidence of an underlying impairment or impairments that could reasonably be expected to produce some degree of the symptoms alleged. *Id.* Second, if the claimant meets this threshold, and there is no affirmative evidence suggesting malingering, "the ALJ can reject the claimant's testimony about the severity of [his] symptoms only by offering specific, clear, and convincing reasons for doing so." *Id.*

1 In weighing a claimant's credibility, the ALJ may consider many factors,  
2 including, “(1) ordinary techniques of credibility evaluation, such as the claimant's  
3 reputation for lying, prior inconsistent statements concerning the symptoms, and  
4 other testimony by the claimant that appears less than candid; (2) unexplained or  
5 inadequately explained failure to seek treatment or to follow a prescribed course of  
6 treatment; and (3) the claimant's daily activities.” *Smolen*, 80 F.3d at 1284. When  
7 evidence reasonably supports either confirming or reversing the ALJ's decision, the  
8 Court may not substitute its judgment for that of the ALJ. *Tackett v. Apfel*, 180  
9 F.3d 1094, 1098 (9th Cir.1999). Here, the ALJ found that the medically  
10 determinable impairments could reasonably be expected to produce the symptoms  
11 Mr. Delegans alleges; however, the ALJ determined that Mr. Delegans’ statements  
12 regarding intensity, persistence, and limiting effects of the symptoms were not  
13 entirely credible. AR 584. The ALJ provided multiple reasons for discrediting Mr.  
14 Delegans’ subjective complaint testimony. AR 584-88.

15 First, the record supports the ALJ’s determination that Mr. Delegans’  
16 ulcerative colitis and abdominal pain is not as limiting as he claims. Mr. Delegans  
17 alleges abdominal problems, monthly ulcerative colitis flare-ups, and he reports  
18 that he would use the bathroom 12 times per day. AR 331, 584, 618-19, 661, 670-  
19 71, 725. However, the ALJ provides a detailed analysis of the record which is  
20

1 replete with inconsistent statements, inconsistency with the medical evidence, and  
2 improvement with treatment. AR 585-86.

3 In October 2008, Mr. Delegans was encouraged to participate in a biological  
4 therapy study to treat his ulcerative colitis but did not follow through with the  
5 referral. AR 585. In 2009, Mr. Delegans was evaluated for a Centocor ulcerative  
6 colitis study but was turned away because objective imaging showed his “mild”  
7 colitis was “not severe enough.” AR 374, 489, 585. Mr. Delegans, in November  
8 2009, reported one to two bowel movements per day without issue, and denied  
9 abdominal discomfort. AR 481.

10 Throughout 2010, Mr. Delegans reported he was doing quite well and denied  
11 any ulcerative colitis flares, he had at most two to three bowel movements per day  
12 without issues, he stated he was quite happy with his lack of ulcerative colitis  
13 symptoms, objective imaging showed no signs of active ulcerative colitis, and it  
14 was noted that his ulcerative colitis was in remission with medications. AR 471,  
15 477, 585, 1996.

16 Mr. Delegans received treatment for pancreatitis in October 2010, which  
17 was resolved by December 2010, and his abdominal examination follow up in  
18 March 2011 was normal. AR 586, 1996, 2471. The ALJ noted that Mr. Delegans  
19 had abdominal pain due to acute pancreatitis in December 2012, which was shown  
20 to have improved in follow up exams, and the ALJ accounted for the pancreatitis in

1 limiting Mr. Delegans residual functional capacity. AR 586, 1447, 2971, 3404,  
2 3407.

3 The ALJ noted Mr. Delegans' ulcerative colitis flared up in 2011, but the  
4 ALJ also noted Mr. Delegans consistently reported two to five bowel movements  
5 per day and his flare ups improved with medication. AR 585, 2443, 2608, 3025.  
6 Furthermore, testing and imaging in 2011 and 2012, continued to show no signs of  
7 colon inflammation and only a mild disease process. AR 585, 2682, 2717, 2498,  
8 2504, 2994. Mr. Delegans denied having any bowel movement problems in  
9 October 2012. AR 585. Additionally, in December 2013, Mr. Delegans reported  
10 that his abdominal pain started only one year ago, which the ALJ noted is very  
11 inconsistent with the alleged onset date in 2007. AR 586, 1863.

12 Mr. Delegans contends that the ALJ erred in determining that his complaints  
13 of ulcerative colitis are not as debilitating as alleged; however, he provides no  
14 medical evidence in the record to the contrary. The ALJ detailed inconsistent  
15 statements, inconsistency with the medical evidence, and improvement with  
16 treatment, all of which are supported by substantial evidence of record and are  
17 clear and convincing reasons to discredit a claimants credibility. *Smolen*, 80 F.3d at  
18 1284.

19 Second, the ALJ noted that Mr. Delegans' alleged problems with lifting,  
20 squatting, bending, standing, reaching, walking, kneeling, stair climbing, and his

1 pain disorder is completely debilitating are unsupported and inconsistent with the  
2 objective medical evidence. AR 209, 584-85. The ALJ provided a detailed  
3 summary of the medical evidence describing largely normal gait and station, good  
4 upper and lower extremity strength, lack of pain or muscle tenderness, normal  
5 strength and range of motion, and no difficulty in moving. AR 585-86. The  
6 medical evidence is inconsistent with Mr. Delegans' claims of complete disability  
7 due to physical pain, and Mr. Delegans does not contend that the ALJ erred in this  
8 determination. Inconsistency between a claimant's allegations and relevant medical  
9 evidence is a legally sufficient reason to reject a claimant's subjective testimony.  
10 *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001). Additionally, the ALJ  
11 accommodated Mr. Delegans by limiting him to light work with additional  
12 restrictions. AR 586.

13 Third, the ALJ discredited Mr. Delegans' subjective complaint testimony  
14 because his mental health limitations are not as debilitating as he alleges. AR 287.  
15 Notably, the Ninth Circuit remanded the decision of the initial ALJ in part because  
16 the ALJ erred in discrediting Mr. Delegans' testimony only regarding his mental  
17 limitations. AR 805. However, Mr. Delegans does not now challenge this reason  
18 provided by the ALJ for discounting his subjective complaints. Furthermore,  
19 the ALJ provides multiple citations to the record detailing Mr. Delegans' generally  
20 improved, stable, controlled, and positive mental health examinations. AR 433,

1 508, 857, 1403. Additionally, Mr. Delegans' treating provider noted on numerous  
2 occasions that he was doing well, his depression improved with medication, and he  
3 reported most days he is in a "good mood." AR 360, 368, 373, 379, 539, 587.  
4 Importantly, Mr. Delegans has discontinued all of his mental health medications.  
5 AR 587. A claimant's statements may be less credible when treatment is  
6 inconsistent with the level of complaints or a claimant is not following treatment  
7 prescribed without good reason. *Molina*, 674 F.3d at 1114. "Unexplained, or  
8 inadequately explained, failure to seek treatment . . . can cast doubt on the sincerity  
9 of [a] claimant's [] testimony." *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989).  
10 Mr. Delegans further stated that he is "doing reasonably well" even without  
11 medications. AR 587, 1385. The medical evidence and Mr. Delegans' own  
12 statements support the ALJ's unchallenged determination that Mr. Delegans'  
13 mental health symptoms are not as limiting as alleged.

14 Fourth, the ALJ discredited Mr. Delegans' credibility due to his inconsistent  
15 statements regarding his social functioning. AR 587-588. Mr. Delegans does not  
16 challenge this reason provided the by the ALJ for discounting his subjective  
17 complaints. Mr. Delegans has reported that he has problems being around others  
18 and that he does not have energy to talk to friends and family on the phone. AR  
19 587. However, Mr. Delegans also stated he has no significant difficulty getting  
20 along with others, his relationships with his coworkers and supervisors has been

1 positive, he was getting out more and visiting with friends and family, he goes and  
2 shoots pool with friends occasionally, he watches wrestling with friends, and he  
3 walks with a friend for exercise. AR 431, 506, 521, 539, 587, 2558. While Mr.  
4 Delegans' statements have been inconsistent, the ALJ did account for difficulty  
5 being around others in the residual functional capacity. AR 588.

6 Fifth, the ALJ briefly states that Mr. Delegans' continued drug use clouds  
7 the severity of his symptoms. AR 588. However, the record does not contain  
8 evidence that Mr. Delegans' use of marijuana or street drugs has significantly  
9 impacted his mental health symptoms. Because the ALJ provided multiple valid  
10 reasons for discrediting Mr. Delegans' subjective complaint testimony, and this  
11 error does not negate the validity of the ALJ's ultimate credibility conclusion, this  
12 error is harmless. *See Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155,  
13 1162 (9th Cir. 2009). The ALJ also properly noted other inconsistent statements  
14 regarding Mr. Delegans' drug use and criminal history, which Mr. Delegans does  
15 not challenge. AR 588, 240-41, 281, 2030, 2430, 2557, 2558.

16 Sixth, the ALJ stated that Mr. Delegans' activities did not support his  
17 allegations of total disability. AR 588. Activities inconsistent with the alleged  
18 symptoms are proper grounds for questioning the credibility of an individual's  
19 subjective allegations. *Molina*, 674 F.3d at 1113 ("[e]ven where those activities  
20 suggest some difficulty functioning, they may be grounds for discrediting the



1 claimant's testimony to the extent that they contradict claims of a totally  
2 debilitating impairment"); *see also Rollins v. Massanari*, 261 F.3d 853, 857 (9th  
3 Cir. 2001). The ALJ correctly noted that Mr. Delegans' allegations of disabling  
4 problems with lifting, squatting, bending, standing, reaching, walking, kneeling,  
5 stair climbing, and getting along with others, and allegations of disabling  
6 abdominal pain and his reported need to use the bathroom 12 times per day are  
7 inconsistent with his daily activities. AR 209, 331, 584, 661, 725. In particular, the  
8 ALJ noted that Mr. Delegans is able to travel out of state (AR 588, 2395); travel  
9 throughout the state of Washington (AR 588, 1412, 2015, 2978); engage in daily  
10 activities, such as exercising, playing guitar, using hand tools, playing pool, and  
11 babysitting (AR 588, 448, 521, 539, 549, 2428, 2540, 2558); socialize with friends  
12 and family (AR 588, 506, 1412, 2558); and handle all of his personal needs such as  
13 personal care and grooming, cooking, chores, shopping, scheduling and attending  
14 doctor's or other appointments, and budgeting and taking care of financial needs  
15 (AR 588, 448, 2015, 2430, 2558). Mr. Delegans reported that he does not socialize  
16 more because his friends live in Seattle, not because of his problems. AR 588, 659.  
17 These activities are inconsistent with Mr. Delegans' allegations of total disability.

18       The Court does not find the ALJ erred when assessing Mr. Delegans'  
19 credibility because Mr. Delegans' allegations of complete disability are  
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1 inconsistent with the record and medical evidence, and Mr. Delegans' activities  
2 reflect a level of functioning that is inconsistent with his claims of total disability.

3 **B. The ALJ Properly Evaluated the Lay Witness Testimony.**

4 The opinion testimony of Mr. Delegans' girlfriend, Carrie Tucker, falls  
5 under the category of "other sources." "Other sources" for opinions include nurse  
6 practitioners, physicians' assistants, therapists, teachers, social workers, spouses,  
7 and other non-medical sources. 20 C.F.R. §§ 404.1513(d), 416.913(d). An ALJ is  
8 required to "consider observations by non-medical sources as to how an  
9 impairment affects a claimant's ability to work." *Sprague v. Bowen*, 812 F.2d 1226,  
10 1232 (9th Cir.1987). Non-medical testimony can never establish a diagnosis or  
11 disability absent corroborating competent medical evidence. *Nguyen v. Chater*, 100  
12 F.3d 1462, 1467 (9th Cir.1996). An ALJ is obligated to give reasons germane to  
13 "other source" testimony before discounting it. *Dodrill v. Shalala*, 12 F.3d 915 (9th  
14 Cir.1993).

15 At the second hearing, Ms. Tucker testified that Mr. Delegans was in and out  
16 of the bathroom twenty times per day on an average day, for a total of six hours,  
17 and forty times on a bad day. AR 673-74. She also testified that Mr. Delegans does  
18 not socialize much, as he becomes uncomfortable with many people in the room,  
19 his mood fluctuates, and he has a bad memory. AR 677. Mr. Delegans does not  
20 dispute the ALJ's finding that Ms. Tucker's testimony is comparable to his

1 subjective complaints, but states that the ALJ erred in assessing his credibility, thus  
2 Ms. Tucker's observations should be credited as true. The ALJ stated that the  
3 statements made by Ms. Tucker support that Mr. Delegans has some limitations,  
4 but the statements generally reflect the same allegations made by Mr. Delegans,  
5 which the ALJ properly determined were not entirely credible. AR 594; *See*  
6 *Valentine v. Comm'r Soc. Sec. Admin.*, 574 F.3d 685, 694 (9th Cir. 2009)  
7 (upholding the ALJ's rejection of a lay witness for the same reasons the ALJ  
8 rejected the claimant's credibility); *see also Molina*, 674 F.3d at 1117.

9 The ALJ properly provided germane reasons for not fully crediting Ms.  
10 Tucker's testimony. The ALJ properly assessed Mr. Delegans' testimony and  
11 credibility, and as the information provided by Ms. Tucker is cumulative to that  
12 provided by Mr. Delegans, the ALJ's well-reasoned explanations for rejecting Mr.  
13 Delegans' testimony properly apply equally well to the ALJ's weighing of Ms.  
14 Tucker's testimony.

### 15 **C. The ALJ Properly Weighed the Medical Opinion Evidence.**

#### 16 **a. Legal Standard.**

17 The Ninth Circuit has distinguished between three classes of medical  
18 providers in defining the weight to be given to their opinions: (1) treating  
19 providers, those who actually treat the claimant; (2) examining providers, those  
20 who examine but do not treat the claimant; and (3) non-examining providers, those

1 who neither treat nor examine the claimant. *Lester v. Chater*, 81 F.3d 821, 830 (9th  
2 Cir. 1996) (as amended).

3 A treating provider's opinion is given the most weight, followed by an  
4 examining provider, and finally a non-examining provider. *Id.* at 830-31. In the  
5 absence of a contrary opinion, a treating or examining provider's opinion may not  
6 be rejected unless "clear and convincing" reasons are provided. *Id.* at 830. If a  
7 treating or examining provider's opinion is contradicted, it may only be discounted  
8 for "specific and legitimate reasons that are supported by substantial evidence in  
9 the record." *Id.* at 830-31.

10 The ALJ may meet the specific and legitimate standard by "setting out a  
11 detailed and thorough summary of the facts and conflicting clinical evidence,  
12 stating his interpretation thereof, and making findings." *Magallanes v. Bowen*, 881  
13 F.2d 747, 751 (9th Cir. 1989) (internal citation omitted). When rejecting a treating  
14 provider's opinion on a psychological impairment, the ALJ must offer more than  
15 his or her own conclusions and explain why he or she, as opposed to the provider,  
16 is correct. *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988).

17 **b. Dr. Shawn Kenderdine, Ph.D.**

18 Dr. Kenderdine completed two evaluations of Mr. Delegans for the  
19 Washington State Department of Social and Health Services ("DSHS"), one in  
20 October 2008, and a second in November 2009, and provided an opinion regarding

1 Mr. Delegans' limitations. AR 428, 448, 593. In October 2008, Dr. Kenderdine  
2 opined that Mr. Delegans was severely limited in his ability to respond  
3 appropriately to and tolerate the pressures and expectations of a normal work  
4 setting, and in November 2009, Dr. Kenderdine again noted severe limitations in  
5 Mr. Delegans' ability to respond to the pressures of a normal work setting. AR  
6 428, 448. Dr. Kenderdine's opinion is contradicted by multiple doctors in the  
7 record, state agency consultants, and Dr. McKnight who examined the entire  
8 record and testified at the third hearing.

9 The ALJ discounted Dr. Kenderdine's opinion for multiple reasons. *See* AR  
10 593. Mr. Delegans briefly takes issue with one of the reasons provided by the ALJ  
11 that Dr. Kenderdine's opinion appears to be based exclusively on Mr. Delegans'  
12 self-reported symptoms. An ALJ may discount a treating provider's opinion if it is  
13 based largely on the claimant's self-reports and not on clinical evidence, and the  
14 ALJ finds the claimant not credible. *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th  
15 Cir. 2014). Indeed, Dr. Kenderdine's treatment records of Mr. Delegans are almost  
16 entirely based on Mr. Delegans' subjective complaints and reports, and check box  
17 forms. AR 426-39, 444-50.

18 Additionally, the opinion of Dr. McKnight who testified at the hearing is  
19 supported by the record and contradicts the opinion of Dr. Kenderdine, and  
20 constitutes substantial evidence for discrediting Dr. Kenderdine's opinion.

1 *Tonapetyan*, 242 F.3d at 1149; *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir.  
2 1995). Dr. Kenderdine was also unaware of Mr. Delegans' continued drug use and  
3 stated that Mr. Delegans was not using drugs, which is inconsistent with the  
4 record, and continued drug use can affect mental functioning. An ALJ may reject a  
5 doctor's opinion when it is inconsistent with other evidence in the record. *See*  
6 *Morgan v. Comm'r of the Soc. Sec. Admin.*, 169 F.3d 595, 602-603 (9th Cir. 1999).  
7 Dr. Kenderdine checked the box stating that Mr. Delegans was not receiving any  
8 mental health treatment, which later reports demonstrate significantly improved his  
9 conditions. AR 360, 368, 373, 379, 448, 539, 587.

10 Furthermore, Dr. Kenderdine's objective notes are inconsistent with his  
11 opinion and largely detail that Mr. Delegans is far better than the severe limitations  
12 assessed. Specifically, Dr. Kenderdine indicated that he did not observe symptoms  
13 that formed the basis for his opinion, he did not observe Mr. Delegans' anxiety,  
14 depression, or physical illness. AR 446, 593. Dr. Kenderdine noted that he did  
15 observe that Mr. Delegans was fully oriented and cooperative with good eye  
16 contact, his thought processes were intact with no evidence of psychosis, and his  
17 content was appropriate. AR 450. A discrepancy between a doctor's recorded  
18 observations and opinions is a clear and convincing reason for not relying on the  
19 doctor's opinion. *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). "[A]n  
20 ALJ need not accept the opinion of a doctor if that opinion is brief, conclusory, and

1 inadequately supported by clinical findings.” *Bayliss*, 427 F.3d at 1216. The ALJ  
2 also notes that the DSHS check box forms used by Dr. Kenderdine use different  
3 rules and regulations to establish disability than those used by the Social Security  
4 Agency. Check-box form statements may be given less weight when they are  
5 conclusory in nature and lack substantive medical findings to support them or they  
6 are inconsistent with the underlying medical records. *Batson v. Comm’r of Soc.*  
7 *Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004); *Garrison v. Colvin*, 759 F.3d  
8 995, 1014 (9th Cir. 2014).

9       When the ALJ presents a reasonable interpretation that is supported by the  
10 evidence, it is not the role of the courts to second-guess it. *Rollins*, 261 F.3d 853,  
11 857. The Court “must uphold the ALJ’s findings if they are supported by inferences  
12 reasonably drawn from the record.” *Molina*, 674 F.3d 1104, 1111; *see also*  
13 *Thomas*, 278 F.3d 947, 954 (if the “evidence is susceptible to more than one  
14 rational interpretation, one of which supports the ALJ’s decision, the conclusion  
15 must be upheld”). In discounting Dr. Kenderdine’s reports, the ALJ supported the  
16 determination with specific and legitimate reasons supported by substantial  
17 evidence in the record. Thus, the Court finds the ALJ did not err in her  
18 consideration of Dr. Kenderdine’s opinion.

1                   **c. Dr. Carolyn Halley, M.D.**

2           Dr. Halley completed two physical evaluation forms regarding Mr. Delegans  
3 for DSHS, one in September 2009, and a second in May 2010, and provided an  
4 opinion regarding Mr. Delegans' limitations. AR 440-43, 451-54, 591. Dr. Halley  
5 opined that Mr. Delegans could perform sedentary work. AR 442. Dr. Halley's  
6 opinion is contradicted by multiple doctors in the record, including Dr. Leung (AR  
7 468-72), Dr. Turner (AR 871-73), and Dr. St. Louis (AR 893-95).

8           The ALJ assigned Dr. Halley's opinion little weight. AR 591. The ALJ  
9 noted that Dr. Halley's opinion regarding Mr. Delegans' physical limitations is  
10 inconsistent with the record. *Id.* In May 2010, Dr. Halley states that Mr. Delegans'  
11 ulcerative colitis has never been in remission (AR 452); however,  
12 contemporaneous medical records state that Mr. Delegans' ulcerative colitis has  
13 significantly improved with medication and is in remission (AR 471-73, 477-78,  
14 481). Dr. Halley states that Mr. Delegans is limited to sedentary work; however,  
15 this is contradicted by medical evidence in the record, as well as Mr. Delegans'  
16 activities of daily living. An ALJ may reject a doctor's opinion when it is  
17 inconsistent with other evidence in the record. *See Morgan*, 169 F.3d at 602-603.  
18 An ALJ may properly reject an opinion that provides restrictions that appear  
19 inconsistent with the claimant's level of activity. *Rollins*, 261 F.3d at 856.  
20 Furthermore, the ALJ correctly noted that Dr. Halley's opinion regarding Mr.



1 Delegans' physical limitations appears to be based primarily on Mr. Delegans'  
2 self-reports, which the ALJ appropriately found not credible. An ALJ may discount  
3 a treating provider's opinion if it is based largely on the claimant's self-reports and  
4 not on clinical evidence, and the ALJ finds the claimant not credible. *Ghanim*, 763  
5 F.3d at 1162.

6 In August 2010, Dr. Halley wrote a letter and completed a questionnaire  
7 regarding Mr. Delegans' mental health status. AR 561-67. Dr. Halley opined that  
8 Mr. Delegans would have difficulty with change in work routines, accepting  
9 criticism from supervisors, getting along with peers and performing teamwork  
10 under the stresses of a work routine, setting goals, and making work-related  
11 decisions. AR 561. Dr. Halley's opinion is contradicted by multiple doctors in the  
12 record, state agency consultants, and Dr. McKnight who examined the entire  
13 record and testified at the third hearing.

14 The ALJ did not completely discount this opinion but assigned little weight  
15 to Dr. Halley's opinion regarding Mr. Delegans' mental health limitations. AR  
16 591-92. The ALJ discounted Dr. Halley's opinion because it is inconsistent with  
17 the record. An ALJ may reject a doctor's opinion when it is inconsistent with other  
18 evidence in the record. *See Morgan*, 169 F.3d at, 602-603. For example, during an  
19 October 2009 mental health evaluation, Mr. Delegans stated that he had positive  
20 relationships with coworkers and supervisors and he was able to work. AR 431,

1 444. Additionally, Mr. Delegans has mostly normal mental exam findings, and Dr.  
2 Burdge observed no mental health symptoms. AR 360, 368, 379, 433, 450, 498,  
3 507, 592, 1392, 1403-04, 2018-19, 2559-60. Dr. Halley also documented  
4 improvement. AR 368, 372, 378, 379, 539, 587. A discrepancy between a doctor's  
5 recorded observations and opinions is a clear and convincing reason for not relying  
6 on the doctor's opinion. *Bayliss*, 427 F.3d at 1216.

7 Dr. Halley premised her opinion in part on a diagnosis of bipolar disorder,  
8 but did not support this diagnosis with any requisite findings. AR 561, 592. The  
9 ALJ noted there is nothing in the record to establish this diagnosis. AR 592. The  
10 ALJ's determination is further supported by Dr. McKnight who testified there are  
11 not such findings in the record. AR 708. The opinion of Dr. McKnight, a mental  
12 health specialist, who reviewed the entire record and testified at the hearing, is  
13 supported by the record and contradicts the opinion of Dr. Halley, and constitutes  
14 substantial evidence for discrediting Dr. Halley's opinion. *Tonapetyan*, 242 F.3d at  
15 1149; *Andrews*, 53 F.3d at 1041; *Molina*, 674 F.3d at 1112 (the opinion of a  
16 specialist in the relevant field is entitled to greater weight); *See also Holohan v.*  
17 *Massanari*, 246 F.3d 1195, 1202 (9th Cir. 2001) ("[T]he regulations give more  
18 weight to ... the opinions of specialists concerning matters relating to their  
19 specialty over that of nonspecialists."); *Smolen*, 80 F.3d at 1285 (holding that the

1 ALJ should have given greater weight to a physician with the expertise that was  
2 most relevant to the patient's allegedly disabling condition).

3 The ALJ also correctly found that Dr. Halley's opinion regarding Mr.  
4 Delegans' mental limitations appears to be based primarily on Mr. Delegans' self-  
5 reports, which the ALJ appropriately found not credible. As noted above, an ALJ  
6 may discount a treating provider's opinion if it is based largely on the claimant's  
7 self-reports and not on clinical evidence, and the ALJ finds the claimant not  
8 credible. *Ghanim*, 763 F.3d at 1162.

9 When the ALJ presents a reasonable interpretation that is supported by the  
10 evidence, it is not the role of the courts to second-guess it. *Rollins*, 261 F.3d 853,  
11 857. The Court "must uphold the ALJ's findings if they are supported by inferences  
12 reasonably drawn from the record." *Molina*, 674 F.3d 1104, 1111; *see also*  
13 *Thomas*, 278 F.3d 947, 954 (if the "evidence is susceptible to more than one  
14 rational interpretation, one of which supports the ALJ's decision, the conclusion  
15 must be upheld"). In discounting Dr. Halley's reports, the ALJ supported the  
16 determination with specific and legitimate reasons supported by substantial  
17 evidence in the record. Thus, the Court finds the ALJ did not err in her  
18 consideration of Dr. Halley's opinion.

1                   **d. Dr. David Widlan, Ph.D.**

2           Dr. Widlan completed a psychological evaluation of Mr. Delegans for DSHS  
3 in May 2010, and provided an opinion regarding Mr. Delegans' limitations. AR  
4 455-61. Dr. Widlan opined that Mr. Delegans was markedly impaired in his ability  
5 to relate appropriately to co-workers and supervisors, interact appropriately in  
6 public contacts, respond appropriately to and tolerate the pressures and  
7 expectations of a normal work setting, care for his own personal hygiene and  
8 appearance, and maintain appropriate behavior in a work setting. AR 459-60. Dr.  
9 Widlan also noted that Mr. Delegans was not receiving any treatment, but his  
10 symptoms appeared treatable. AR 460. Dr. Widlan's opinion is also contradicted  
11 by multiple doctors in the record, state agency consultants, and Dr. McKnight who  
12 examined the entire record and testified at the third hearing.

13           The ALJ did not completely discount Dr. Widlan's opinion but agreed that  
14 Mr. Delegans' symptoms appeared treatable and assigned the remainder of the  
15 opinion little weight. AR 593. Mr. Delegans does not actually present any  
16 argument as to how the ALJ erred in assigning little weight to the opinion of Dr.  
17 Widlan; rather, he simply concludes that the reasons provided by the ALJ are not  
18 legitimate and appear to indicate the ALJ is biased against the DSHS evaluations.  
19 Mr. Delegans must do more than simply issue spot, he has the burden of showing  
20 prejudicial error. *See Molina*, 674 F.3d at 1110-11. Mr. Delegans has left it to the

1 Court to guess at his specific contentions and the evidence that causes him  
2 concern. It is not this Court's job to identify the specific evidence that causes Mr.  
3 Delegans concern much less explain how it undermines the ALJ's rationale. *United*  
4 *States v. Renzi*, 651 F.3d 1012, 1030 (9th Cir. 2011); *Indep. Towers of Washington*  
5 *v. Washington*, 350 F.3d 925, 929–30 (9th Cir. 2003).

6 Nevertheless, the ALJ provided multiple legitimate reasons for assigning  
7 little weight to the opinion of Dr. Widlan. As noted above, Dr. Widlan indicated  
8 that Mr. Delegans' symptoms appeared treatable if he did receive mental health  
9 treatment, which is consistent with other medical evidence in the record that Mr.  
10 Delegans has improved with treatment. AR 360, 368, 373, 379, 460, 448, 539, 587,  
11 593. Dr. Widlan was also unaware of Mr. Delegans' continued drug use and stated  
12 that Mr. Delegans was not using drugs, which is inconsistent with the record and  
13 continued drug use can affect mental functioning. An ALJ may reject a doctor's  
14 opinion when it is inconsistent with other evidence in the record. *See Morgan v.*  
15 *Comm'r of the Soc. Sec. Admin.*, 169 F.3d 595, 602-603 (9th Cir. 1999). The ALJ  
16 also discounted the opinion because it consists of a check box form based almost  
17 entirely on Mr. Delegans' subjective complaints, which the ALJ found not  
18 credible. AR 593. Check-box form statements may be given less weight when they  
19 are conclusory in nature and lack substantive medical findings to support them or  
20 they are inconsistent with the underlying medical records. *Batson*, 359 F.3d at

1 1195; *Garrison*, 759 F.3d at 1014. “[A]n ALJ need not accept the opinion of a  
2 doctor if that opinion is brief, conclusory, and inadequately supported by clinical  
3 findings.” *Bayliss*, 427 F.3d at 1216. An ALJ may discount a treating provider’s  
4 opinion if it is based largely on the claimant’s self-reports and not on clinical  
5 evidence, and the ALJ finds the claimant not credible. *Ghanim*, 763 F.3d at 1162.

6 Furthermore, Dr. Widlan’s notes are inconsistent with his opinion and  
7 inconsistent with the record and Mr. Delegans’ actual abilities. Dr. Widlan opines  
8 that Mr. Delegans’ has marked impairments with his ability to care for himself,  
9 including personal hygiene and appearance. AR 459. Dr. Widlan then states on the  
10 next page that Mr. Delegans is actually able to keep up with his daily hygiene. AR  
11 460. A discrepancy between a doctor’s recorded observations and opinions is a  
12 clear and convincing reason for not relying on the doctor’s opinion. *Bayliss*, 427  
13 F.3d at 1216. The record also demonstrates that Mr. Delegans’ is able to travel out  
14 of state (AR 588, 2395); travel throughout the state of Washington (AR 588, 1412,  
15 2015, 2978); engage in daily activities, such as exercising, playing guitar, using  
16 hand tools, playing pool, and babysitting (AR 588, 448, 521, 539, 549, 2428, 2540,  
17 2558); socialize with friends and family (AR 588, 506, 1412, 2558); and handle all  
18 of his personal needs such as personal care and grooming, cooking, chores,  
19 shopping, scheduling and attending doctor’s or other appointments, and budgeting  
20 and taking care of financial needs (AR 588, 448, 2015, 2430, 2558). An ALJ may

1 reject a doctor's opinion when it is inconsistent with other evidence in the record.  
2 *See Morgan*, 169 F.3d at 602-603. An ALJ may properly reject an opinion that  
3 provides restrictions that appear inconsistent with the claimant's level of activity.  
4 *Rollins*, 261 F.3d at 856.

5 When the ALJ presents a reasonable interpretation that is supported by the  
6 evidence, it is not the role of the courts to second-guess it. *Rollins*, 261 F.3d 853,  
7 857. The Court "must uphold the ALJ's findings if they are supported by inferences  
8 reasonably drawn from the record." *Molina*, 674 F.3d 1104, 1111; *see also*  
9 *Thomas*, 278 F.3d 947, 954 (if the "evidence is susceptible to more than one  
10 rational interpretation, one of which supports the ALJ's decision, the conclusion  
11 must be upheld"). In assigning little weight to Dr. Widlan's opinion, the ALJ  
12 supported the determination with specific and legitimate reasons supported by  
13 substantial evidence in the record. Thus, the Court finds the ALJ did not err in her  
14 consideration of Dr. Widlan's opinion.

15 **e. Dr. Kevin Leung, M.D.**

16 Dr. Leung completed a questionnaire in August 2010, regarding Mr.  
17 Delegans' limitations. AR 568-72. Dr. Leung opined that Mr. Delegans was  
18 capable of low stress work. AR 570. He further opined that Mr. Delegans could sit  
19 for about four hours in an eight hour workday and stand/walk for about four hours  
20 in an eight hour workday, that Mr. Delegans would need to take unscheduled

1 restroom breaks every hour, and would miss two or three days of work per month.  
2 AR 571-72. Dr. Leung's opinion is contradicted by multiple other doctor opinions  
3 in the record, including Dr. Thompson (AR 300), Dr. Turner (AR 871-73), and Dr.  
4 St. Louis (AR 893-95). Dr. Leung's opinion is also contradicted by his own  
5 contemporaneous medical reports. AR 471-91.

6 The ALJ assigned great weight to the portion of Dr. Leung's opinion stating  
7 that Mr. Delegans is capable of performing low stress work, as this is consistent  
8 with the record as a whole, and this limitation was accounted for in the residual  
9 functional capacity. AR 590-91. Mr. Delegans does not challenge this finding. The  
10 ALJ assigned no weight to the remainder of Dr. Leung's opinion. AR 591. Again  
11 Mr. Delegans does not present any argument as to how or why the ALJ erred;  
12 rather, he simply concludes without citation that two of the three reasons provided  
13 by the ALJ are not legitimate. Again, Mr. Delegans is required to do more, he has  
14 the burden of showing prejudicial error. *See Molina*, 674 F.3d at 1110-11. Mr.  
15 Delegans has once again left it to the Court to guess at his specific contentions and  
16 the evidence that causes him concern. It is not this Court's job to identify the  
17 specific evidence that causes Mr. Delegans concern much less explain how it  
18 undermines the ALJ's rationale. *Renzi*, 651 F.3d at 1030; *Indep. Towers of*  
19 *Washington*, 350 F.3d at 929-30.



1       The ALJ did in fact provide multiple legitimate reasons for assigning little  
2 weight to a portion of Dr. Leung’s opinion. First, the ALJ correctly states that Dr.  
3 Leung does not provide any information to support his opinion that Mr. Delegans  
4 is limited in his ability to sit, stand, and walk. AR 591. “[A]n ALJ need not accept  
5 the opinion of a doctor if that opinion is brief, conclusory, and inadequately  
6 supported by clinical findings.” *Bayliss*, 427 F.3d at 1216. Second, Dr. Leung’s  
7 opinion is inconsistent with his own treatment notes which state that Mr. Delegans’  
8 ulcerative colitis symptoms improved, is inactive, and in remission. AR 471-73,  
9 477, 478, 481, 591. A discrepancy between a doctor’s recorded observations and  
10 opinions is a clear and convincing reason for not relying on the doctor’s opinion.  
11 *Bayliss*, 427 F.3d at 1216. Third, Dr. Leung’s opinion is inconsistent with other  
12 medical reports in the record and Mr. Delegans’ own statements to his providers  
13 regarding the frequency of his bowel movements. AR 374, 481, 489, 585, 591,  
14 1996, 2682, 2717, 2498, 2504, 2994. An ALJ may reject a doctor’s opinion when it  
15 is inconsistent with other evidence in the record. *See Morgan*, 169 F.3d at 602-603.

16       When the ALJ presents a reasonable interpretation that is supported by the  
17 evidence, it is not the role of the courts to second-guess it. *Rollins*, 261 F.3d 853,  
18 857. The Court “must uphold the ALJ’s findings if they are supported by inferences  
19 reasonably drawn from the record.” *Molina*, 674 F.3d 1104, 1111; *see also*  
20 *Thomas*, 278 F.3d 947, 954 (if the “evidence is susceptible to more than one

1 rational interpretation, one of which supports the ALJ’s decision, the conclusion  
2 must be upheld”). In discounting Dr. Leung’s opinion, the ALJ supported the  
3 determination with specific and legitimate reasons supported by substantial  
4 evidence in the record. Thus, the Court finds the ALJ did not err in her  
5 consideration of Dr. Leung’s opinion.

6 **f. Russell Anderson, LICSW.**

7 The opinion testimony of Mr. Anderson, a licensed social worker, falls  
8 under the category of “other sources.” “Other sources” for opinions include nurse  
9 practitioners, physicians' assistants, therapists, teachers, social workers, spouses,  
10 and other non-medical sources. 20 C.F.R. §§ 404.1513(d), 416.913(d). An ALJ is  
11 required to “consider observations by non-medical sources as to how an  
12 impairment affects a claimant's ability to work.” *Sprague v. Bowen*, 812 F.2d 1226,  
13 1232 (9th Cir.1987). Non-medical testimony can never establish a diagnosis or  
14 disability absent corroborating competent medical evidence. *Nguyen v. Chater*, 100  
15 F.3d 1462, 1467 (9th Cir.1996). An ALJ is obligated to give reasons germane to  
16 “other source” testimony before discounting it. *Dodrill v. Shalala*, 12 F.3d 915 (9th  
17 Cir.1993).

18 Mr. Anderson completed a psychological assessment of Mr. Delegans for  
19 DSHS in May 2011. AR 2013-17. Mr. Anderson opined that Mr. Delegans is  
20 limited by chronic pain associated with medical problems in his ability to stand,

1 walk, sit, or kneel for any length of time, and that he is unable to perform his usual  
2 line of work in heavy labor. AR 2016. The ALJ stated that she agrees that Mr.  
3 Delegans is unable to perform his past work, but that no weight is given to Mr.  
4 Anderson's opinions regarding Mr. Delegans' physical limitations because these  
5 are not within his area of expertise.

6 Mr. Delegans does not contend that the ALJ erred in rejecting Mr.  
7 Anderson's opinions regarding his physical limitations. Rather, Mr. Delegans  
8 merely concludes that the ALJ did not state any valid reason for rejecting Mr.  
9 Anderson's opinion about his mental functional limitations.

10 The psychological assessment form completed by Mr. Anderson consists of  
11 a series of check boxes, followed by the actual "medical source statement"  
12 narrative opinion describing Mr. Delegans' limitations. AR 2013-17. Agency  
13 policy directs that it is the narrative portion written by the evaluator that the  
14 adjudicators are to use in the assessment of the RFC. Program Operations Manual  
15 System (POMS) DI 25020.010(B)(1); *Warre v. Comm'r of Soc. Sec. Admin.*, 439  
16 F.3d 1001, 1005 (9th Cir. 2006) ("The POMS does not have the force of law, but it  
17 is persuasive authority."). The ALJ provided a valid reason for rejecting the  
18 narrative portion of Mr. Anderson's assessment, which Mr. Delegans does not  
19 contest.

1           Additionally, if any error occurred, it is harmless, as the three check boxes  
2 Mr. Delegans references are cumulative to other opinions which the ALJ has  
3 correctly found to be inconsistent with other evidence in the record and were  
4 appropriately discredited. An ALJ may reject a doctor's opinion when it is  
5 inconsistent with other evidence in the record. *See Morgan*, 169 F.3d at 600.  
6 Additionally, as noted above, check-box form statements may be given less weight  
7 as they are conclusory in nature and lack substantive medical findings to support  
8 them. *Batson*, 359 F.3d at 1195; *Garrison*, 759 F.3d at 1014. Further, Mr.  
9 Anderson's opinion is contradicted by the opinion of Dr. McKnight, who testified  
10 at the hearing, and is supported by the record and contradicts the check box form  
11 of Mr. Anderson; thus, constitutes substantial evidence for discrediting the check  
12 box form. *Tonapetyan*, 242 F.3d at 1149; *Andrews*, 53 F.3d at 1041.

13           Accordingly, the Court finds the ALJ did not err in her consideration of Mr.  
14 Anderson's opinion.

15           **g. Dr. Mary Pellicer, M.D.**

16           Consultative examiner, Dr. Pellicer, completed a physical evaluation of Mr.  
17 Delegans in October 2011. AR 2428-35. Dr. Pellicer opined that Mr. Delegans can  
18 stand and walk for four hours in an eight hour workday and sit for six hours with  
19 frequent breaks, he can lift 20 pound occasionally, he can bend but not squat, he  
20 can manipulate occasionally, and he is limited in a wide variety of settings due to

1 underlying bipolar disorder. AR 2433. Dr. Pellicer's opinion is contradicted by  
2 multiple other doctor opinions in the record, including Dr. Thompson (AR 300),  
3 Dr. Turner (AR 871-73), and Dr. St. Louis (AR 893-95). Dr. Pellicer's opinion is  
4 also contradicted by her own contemporaneous medical reports. AR 2428-33.

5       The ALJ assigned little weight to Dr. Pellicer's opinion regarding Mr.  
6 Delegans' physical limitations, and no weight to Dr. Pellicer's opinion regarding  
7 Mr. Delegans' mental functioning. Dr. Pellicer's opinion regarding mental  
8 functioning was not credited because the examination performed was a physical,  
9 not psychological, consultative examination. Mr. Delegans does not challenge this  
10 determination. Mr. Delegans contends that two of the three reasons the ALJ  
11 provided for assigning little weight to Dr. Pellicer's opinion are not legitimate.  
12 Again, Mr. Delegans provides a conclusory objection but fails to provide any  
13 citation to any treatment notes or other records to undermine the ALJ's decision.  
14 Again, Mr. Delegans has failed to meet his burden of showing prejudicial error.  
15 *See Molina*, 674 F.3d at 1110-11. Mr. Delegans has once again left it to the Court  
16 to guess at his specific contentions and the evidence that causes him concern. It is  
17 not this Court's job to identify the specific evidence that causes Mr. Delegans  
18 concern much less explain how it undermines the ALJ's rationale. *Renzi*, 651 F.3d  
19 at 1030; *Indep. Towers of Washington*, 350 F.3d at 929-30.

1       The ALJ did provide multiple legitimate reasons for assigning little weight  
2 to Dr. Pellicer's opinion. First, the ALJ correctly noted that Dr. Pellicer's opinion  
3 of extreme limitations is inconsistent with her own examination findings. AR 589.  
4 While Dr. Pellicer opined that Mr. Delegans would be very limited due to physical  
5 pain, the majority of the examination findings were normal or close to normal. AR  
6 2428-35. A discrepancy between a doctor's recorded observations and opinions is  
7 a clear and convincing reason for not relying on the doctor's opinion. *Bayliss*, 427  
8 F.3d at 1216. "[A]n ALJ need not accept the opinion of a doctor if that opinion is  
9 brief, conclusory, and inadequately supported by clinical findings." *Id.* Second, Dr.  
10 Pellicer's opinion is inconsistent with the record. For example, Dr. Pellicer  
11 credited Mr. Delegans' subjective reports of pain while noting "[n]o x-rays  
12 available for review" (AR 2429); however, the x-rays in the record were normal  
13 (AR 589, 2004-05). An ALJ may reject a doctor's opinion when it is inconsistent  
14 with other evidence in the record. *See Morgan*, 169 F.3d at 602-603. Third, the  
15 ALJ assigned the opinion little weight because, while there are a few physical  
16 examination notes, the opinion is largely based on Mr. Delegans' self-reports,  
17 which the ALJ appropriately found not credible. AR 589, 2428-34. An ALJ may  
18 discount an opinion if it is based largely on the claimant's self-reports and not on  
19 clinical evidence, and the ALJ finds the claimant not credible. *Ghanim*, 763 F.3d at  
20 1162.

1       When the ALJ presents a reasonable interpretation that is supported by the  
2 evidence, it is not the role of the courts to second-guess it. *Rollins*, 261 F.3d 853,  
3 857. The Court “must uphold the ALJ's findings if they are supported by inferences  
4 reasonably drawn from the record.” *Molina*, 674 F.3d 1104, 1111; *see also*  
5 *Thomas*, 278 F.3d 947, 954 (if the “evidence is susceptible to more than one  
6 rational interpretation, one of which supports the ALJ’s decision, the conclusion  
7 must be upheld”). In discounting Dr. Pellicer’s opinion, the ALJ supported the  
8 determination with specific and legitimate reasons supported by substantial  
9 evidence in the record. Thus, the Court finds the ALJ did not err in her  
10 consideration of Dr. Pellicer’s opinion.

11               **h. Dr. Aaron Burdge, Ph.D.**

12       Consultative examiner, Dr. Burdge, completed a psychological evaluation of  
13 Mr. Delegans in March 2012. AR 1392-1406. Dr. Burdge opined that Mr.  
14 Delegans was unlikely to function adequately in a work setting at this time and  
15 opined that Mr. Delegans had mild to moderate limitations in multiple areas of  
16 cognitive and social functioning. AR 1405-06. Dr. Burdge’s opinion is  
17 contradicted by multiple doctors in the record, state agency consultants, and Dr.  
18 McKnight who examined the entire record and testified at the third hearing. Dr.  
19 Burdge’s opinion is also contradicted by his own contemporaneous medical  
20 reports. AR 1392-1405.

1           The ALJ assigned some weight to the opinion of Dr. Burdge that Mr.  
2   Delegans has no more than moderate limitations in cognitive and social  
3   functioning, because it is generally consistent with the mental status examination  
4   results and Mr. Delegans' daily activities. AR 592. Mr. Delegans does not  
5   challenge this determination. The ALJ assigned little weight to Dr. Burdge's  
6   opinion that Mr. Delegans would be unlikely to function adequately in a workplace  
7   at this time. *Id.* Mr. Delegans concludes, without any argument or citation to  
8   anything in the record to support his conclusion, that the ALJ's reasoning for  
9   assigning little weight to a portion of the opinion is not supported by substantial  
10   evidence and is not legitimate. Mr. Delegans has failed to meet his burden of  
11   showing prejudicial error. *See Molina*, 674 F.3d at 1110-11. Mr. Delegans has once  
12   again left it to the Court to guess at his specific contentions and the evidence that  
13   causes him concern. It is not this Court's job to identify the specific evidence that  
14   causes Mr. Delegans concern much less explain how it undermines the ALJ's  
15   rationale. *Renzi*, 651 F.3d at 1030; *Indep. Towers of Washington*, 350 F.3d at 929–  
16   30.

17           Furthermore, the ALJ did provide a legitimate reason, supported by  
18   substantial evidence in the record, to assign little weight to the opinion. The ALJ  
19   found Dr. Burdge's opinion to be inconsistent with his contemporary exam  
20   findings and notes. AR 592. A discrepancy between a doctor's recorded



1 observations and opinions is a clear and convincing reason for not relying on the  
2 doctor's opinion. *Bayliss*, 427 F.3d at 1216. "[A]n ALJ need not accept the opinion  
3 of a doctor if that opinion is brief, conclusory, and inadequately supported by  
4 clinical findings." *Id.* Additionally, an ALJ may reject a doctor's opinion when it is  
5 inconsistent with other evidence in the record. *See Morgan*, 169 F.3d at 602-603.  
6 Indeed, Dr. Burdge observed no mental health symptoms (AR 1392), and Dr.  
7 Burdge found that Mr. Delegans could maintain his activities of daily living in a  
8 timely manner by himself, Mr. Delegans reported having no significant difficulty  
9 getting along with others, and Dr. Burdge's notes state that Mr. Delegans has no  
10 difficulty attending to his needs (AR 1402). Mr. Delegans' mental status  
11 examination was unremarkable. AR 592, 1392-1406. Dr. McKnight's testimony  
12 further supports the ALJ's determination and similarly found Dr. Burge's opinion  
13 out of step with his findings. AR 710-12.

14       When the ALJ presents a reasonable interpretation that is supported by the  
15 evidence, it is not the role of the courts to second-guess it. *Rollins*, 261 F.3d 853,  
16 857. The Court "must uphold the ALJ's findings if they are supported by inferences  
17 reasonably drawn from the record." *Molina*, 674 F.3d 1104, 1111; *see also*  
18 *Thomas*, 278 F.3d 947, 954 (if the "evidence is susceptible to more than one  
19 rational interpretation, one of which supports the ALJ's decision, the conclusion  
20 must be upheld"). In assigning little weight to the opinion of Dr. Burdge, the ALJ

1 supported the determination with specific and legitimate reasons supported by  
2 substantial evidence in the record. Thus, the Court finds the ALJ did not err in her  
3 consideration of Dr. Burdge's opinion.

4 **i. Dr. David Jackson, M.D.**

5 Dr. Jackson completed a functional assessment and a medical source  
6 statement of Mr. Delegans, and provided an opinion regarding Mr. Delegans'  
7 limitations. AR 2471-72, 2963-66. Dr. Jackson opined that Mr. Delegans could not  
8 stand or sit for six hours with standard rest breaks or sit for prolonged periods, he  
9 could lift a maximum of ten pounds and could frequently lift two pounds, he  
10 needed regular access to a restroom, he would take six to eight restroom breaks for  
11 approximately ten minutes each, and he would miss four days of work per month.  
12 *Id.* Dr. Jackson stated that the limitations are due to Mr. Delegans' need for  
13 frequent trips to the restroom and frequent muscle cramping. AR 2571. Dr.  
14 Jackson's opinion is contradicted by multiple other doctor opinions and evidence  
15 in the record, including Dr. Thompson (AR 300), Dr. Turner (AR 871-73), Dr. St.  
16 Louis (AR 893-95), Dr. Leung (AR 568-72), and Dr. Pellicer (AR 2428-35).

17 The ALJ did not completely discount the opinion of Dr. Jackson but  
18 assigned the opinion little weight. AR 589-90. Mr. Delegans takes issue with this  
19 determination by the ALJ, but simply concludes, without any argument or citation  
20 to anything in the record to support his conclusion, that the ALJ is incorrect

1 because Dr. Jackson’s opinion is consistent with the objective evidence and is  
2 supported by his findings and longitudinal knowledge of Mr. Delegans’  
3 impairments. Here again, Mr. Delegans has failed to meet his burden of showing  
4 prejudicial error. *See Molina*, 674 F.3d at 1110-11. Mr. Delegans has once again  
5 left it to the Court to guess at his specific contentions and the evidence that causes  
6 him concern. It is not this Court’s job to identify the specific evidence that causes  
7 Mr. Delegans concern much less explain how it undermines the ALJ’s rationale.  
8 *Renzi*, 651 F.3d at 1030; *Indep. Towers of Washington*, 350 F.3d at 929–30.

9 Dr. Jackson’s opinion was assigned little weight for multiple reasons. The  
10 ALJ agreed that Mr. Delegans’ ulcerative colitis symptoms did impair his ability to  
11 work and accounted for these limitations in the residual functional capacity, but not  
12 to the extent opined by Dr. Jackson. AR 583, 590. The ALJ noted that Mr.  
13 Delegans’ ulcerative colitis is not as disabling as Dr. Jackson opined, and the  
14 opinion is inconsistent with the contemporaneous medical evidence, exams, and  
15 testing. AR 590. For example, Mr. Delegans’ ulcerative colitis was deemed “mild”  
16 and “not severe enough” for a biological therapy study (AR 374, 489, 585); the  
17 medical evidence repeatedly notes a much lower frequency of bowel movement of  
18 one to five bowel movements per day, a lack of ulcerative colitis symptoms, and  
19 remission (AR 471, 477, 481, 585, 1996); testing and imaging, including a  
20 colonoscopy one month prior to Dr. Jackson’s medical source statement, were mild

1 or normal (AR 585, 2498, 2504, 2682, 2717, 29940; and Mr. Delegans denied  
2 having bowel movement problems, including in October 2012 (AR 585). An ALJ  
3 may reject a doctor's opinion when it is inconsistent with other evidence in the  
4 record. *See Morgan*, 169 F.3d at 602-603. Additionally, Mr. Delegans' is able to  
5 travel out of state (AR 588, 2395); travel throughout the state of Washington (AR  
6 588, 1412, 2015, 2978); and engage in daily activities, such as exercising, playing  
7 guitar, using hand tools, playing pool, and babysitting (AR 588, 448, 521, 539,  
8 549, 2428, 2540, 2558). An ALJ may properly reject an opinion that provides  
9 restrictions that appear inconsistent with the claimant's level of activity. *Rollins*,  
10 261 F.3d at 856.

11 The ALJ also discounted Dr. Jackson's opinion because of further  
12 inconsistencies with the objective medical evidence. The record demonstrates  
13 normal objective findings in Mr. Delegans' strength and range of motion in his  
14 extremities, and his cramping is decreased when his calcium is balanced. AR 2428-  
15 35. As stated above, an ALJ may reject a doctor's opinion when it is inconsistent  
16 with other evidence in the record. *See Morgan*, 169 F.3d at 602-603.

17 When the ALJ presents a reasonable interpretation that is supported by the  
18 evidence, it is not the role of the courts to second-guess it. *Rollins*, 261 F.3d 853,  
19 857. The Court "must uphold the ALJ's findings if they are supported by inferences  
20 reasonably drawn from the record." *Molina*, 674 F.3d 1104, 1111; *see also*

1 *Thomas*, 278 F.3d 947, 954 (if the “evidence is susceptible to more than one  
2 rational interpretation, one of which supports the ALJ’s decision, the conclusion  
3 must be upheld”). In discounting Dr. Jackson’s opinion, the ALJ supported the  
4 determination with specific and legitimate reasons supported by substantial  
5 evidence in the record. Thus, the Court finds the ALJ did not err in her  
6 consideration of Dr. Jackson’s opinion.

7 **j. Dr. Larry Birger, M.D.**

8 Dr. Birger completed a medical source statement regarding Mr. Delegans,  
9 and provided an opinion regarding Mr. Delegans’ limitations. AR 1454-57. Dr.  
10 Birger opined that Mr. Delegans could stand or walk for less than two hours and sit  
11 for less than two hours, he can rarely lift ten pounds and would have postural  
12 restrictions, he would take unscheduled bathroom breaks three to nine times per  
13 day for 10 to 20 minutes each, he would need to lie down every two hours, he  
14 would be off task 25 percent of the time, he was incapable of even low stress work,  
15 and he would be absent more than four days per month. *Id.* Dr. Birger’s opinion is  
16 contradicted by multiple other doctor opinions and evidence in the record,  
17 including Dr. Thompson (AR 300), Dr. Turner (AR 871-73), Dr. St. Louis (AR  
18 893-95), Dr. Leung (AR 568-72), and Dr. Pellicer (AR 2428-35).

19 The ALJ did not completely discount the opinion of Dr. Birger but assigned  
20 the opinion little weight. AR 5-90. Mr. Delegans takes issue with this

1 determination by the ALJ, but simply concludes, without any argument or citation  
2 to anything in the record to support his conclusion, that none of the ALJ's reasons  
3 are specific and legitimate. Mr. Delegans again fails to meet his burden of showing  
4 prejudicial error. *See Molina*, 674 F.3d at 1110-11. Mr. Delegans has once again  
5 left it to the Court to guess at his specific contentions and the evidence that causes  
6 him concern. It is not this Court's job to identify the specific evidence that causes  
7 Mr. Delegans concern much less explain how it undermines the ALJ's rationale.  
8 *Renzi*, 651 F.3d at 1030; *Indep. Towers of Washington*, 350 F.3d at 929–30.

9       The ALJ provided multiple specific and legitimate reasons, supported by the  
10 record, to assign little weight to Dr. Birger's opinion. The ALJ notes that Dr.  
11 Birger's opinion is inconsistent with the overall medical evidence. AR 590. As the  
12 ALJ correctly states, despite Dr. Birger's very limiting opinion, the objective  
13 medical evidence demonstrates that Mr. Delegans' physical examinations have  
14 been largely unremarkable, he has a full range of motion in his extremities, his  
15 strength and sensation of the extremities are intact, and his gait is normal. AR 585-  
16 86, 590, 2428-35. An ALJ may reject a doctor's opinion when it is inconsistent  
17 with other evidence in the record. *See Morgan*, 169 F.3d at 602-603.

18       Additionally, the ALJ again noted that Mr. Delegans' ulcerative colitis is  
19 stable and he has reported only having two to three bowel movements per day. AR  
20 471, 477, 481, 585, 590, 1996. Mr. Delegans agrees that his ulcerative colitis is

1 stable, but states this is not a valid reason to reject Dr. Birger's opinion. However,  
2 the fact that Mr. Delegans' ulcerative colitis is stable is a very valid reason for  
3 assigning little weight to Dr. Birger's opinion, especially because most the  
4 limitations opined by Dr. Birger are directly related to Mr. Delegans' ulcerative  
5 colitis. As previously stated, an ALJ may reject a doctor's opinion when it is  
6 inconsistent with other evidence in the record. *See Morgan*, 169 F.3d at 602-603.  
7 The ALJ also assigned the opinion little weight because the opinion relies heavily  
8 on Mr. Delegans' subjective complaints that the ALJ properly found not entirely  
9 credible. AR 590. An ALJ may discount an opinion if it is based largely on the  
10 claimant's self-reports and not on clinical evidence, and the ALJ finds the claimant  
11 not credible. *Ghanim*, 763 F.3d at 1162.

12 When the ALJ presents a reasonable interpretation that is supported by the  
13 evidence, it is not the role of the courts to second-guess it. *Rollins*, 261 F.3d 853,  
14 857. The Court "must uphold the ALJ's findings if they are supported by inferences  
15 reasonably drawn from the record." *Molina*, 674 F.3d 1104, 1111; *see also*  
16 *Thomas*, 278 F.3d 947, 954 (if the "evidence is susceptible to more than one  
17 rational interpretation, one of which supports the ALJ's decision, the conclusion  
18 must be upheld"). In discounting Dr. Birger's opinion, the ALJ supported the  
19 determination with specific and legitimate reasons supported by substantial  
20

1 evidence in the record. Thus, the Court finds the ALJ did not err in her  
2 consideration of Dr. Birger’s opinion.

3 **k. Other Physician Opinions.**

4 Mr. Delegans briefly notes that the ALJ assigned “great” or “significant”  
5 weight to multiple other doctors in the record including Dr. McKnight, Dr. St.  
6 Louis, and Dr. Thompson. Mr. Delegans then concludes that the ALJ erred by  
7 failing to acknowledge that the opinions of non-examining physicians are generally  
8 entitled to less weight than treating and examining physicians.

9 However, the ALJ specifically notes that she has considered the opinions in  
10 accordance with the requirements of the regulation cited by Mr. Delegans, 20  
11 C.F.R. § 404.1527. The ALJ supported her determinations with valid reasons  
12 supported by the record, such as consistency with the longitudinal record and  
13 objective findings, supportability, and other factors. *See* 20 C.F.R. § 404.1527(c).  
14 Additionally, Dr. McKnight’s opinion was properly afforded great weight because  
15 of its consistency with the objective evidence and longitudinal record, his expertise  
16 and specialty in the field of mental health, and he thoroughly explained his  
17 rationale. *See* 20 C.F.R. §§ 404.1527(c)(3)-(c)(6), 416.927(c)(3)-(c)(6). Great  
18 weight may legitimately be given to the opinion of a non-examining expert who  
19 testifies at a hearing, such as Dr. McKnight. *Andrews v. Shalala*, 53 F.3d 1035,  
20 1042 (9th Cir. 1995).



1           Moreover, it is the ALJ’s duty to explain why “significant probative  
2 evidence has been rejected,” rather than explain why it was not. *Vincent on Behalf*  
3 *of Vincent v. Heckler*, 739 F.2d 1393, 1394–95 (9th Cir. 1984). When the ALJ  
4 presents a reasonable interpretation that is supported by substantial evidence, it is  
5 not the role of the courts to second-guess it. *Rollins*, 261 F.3d at 857. The Court  
6 “must uphold the ALJ’s findings if they are supported by inferences reasonably  
7 drawn from the record.” *Molina*, 674 F.3d at 1111; *see also Thomas*, 278 F.3d at  
8 954 (if the “evidence is susceptible to more than one rational interpretation, one of  
9 which supports the ALJ’s decision, the conclusion must be upheld”). Thus, the  
10 Court finds the ALJ did not err.

11           **D. The ALJ properly assessed Mr. Delegans’ residual functional capacity**  
12           **and did not err at step five of the sequential evaluation process.**

13           Mr. Delegans argues that his assessed residual functional capacity and the  
14 resulting step five finding did not account for all of his limitations. Specifically,  
15 Mr. Delegans contends that the assessed residual functional capacity is incomplete  
16 because it includes some, but not all, of the limitations suggested by the medical  
17 experts and lay witnesses discussed above. However, the Court has already found  
18 no error in the ALJ’s treatment of the above disputed medical experts and lay  
19 witnesses. *See supra* at 17-48. The ALJ’s decision is supported by substantial  
20 evidence and the ALJ appropriately constructed Mr. Delegans’ residual functional  
capacity.

1 Step five shifts the burden to the Commissioner to prove that the claimant is  
2 able to perform other work available in significant numbers in the national  
3 economy, taking into account the claimant's age, education, and work experience.  
4 See 20 C.F.R. §§ 404.1512(f), 404.1520(g), 404.1560(c) & 416.912(f), 416.920(g),  
5 416.960(c). To meet this burden, the Commissioner must establish that (1) the  
6 claimant is capable of performing other work; and (2) such work exists in  
7 "significant numbers in the national economy." 20 C.F.R. §§ 404.1560(c)(2);  
8 416.960(c)(2); *Beltran v. Astrue*, 676 F.3d 1203, 1206 (9th Cir. 2012). If the  
9 limitations are non-exertional and not covered by the grids, a vocational expert is  
10 required to identify jobs that match the abilities of the claimant, given [his]  
11 limitations." *Johnson v. Shalala*, 60 F.3d 1428, 1432 (9th Cir. 1995).

12 Mr. Delegans briefly contends that the ALJ failed to identify jobs available  
13 in significant numbers that Mr. Delegans could perform despite his functional  
14 limitations because not every limitation suggested by the doctors and lay witnesses  
15 was included. The Court will uphold the ALJ's findings when a claimant attempts  
16 to restate the argument that the residual functional capacity finding did not account  
17 for all limitations. *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1175-76 (9th Cir.  
18 2008).

19 The ALJ properly framed the hypothetical question addressed to the  
20 vocational expert. Additionally, the vocational expert identified jobs in the national

1 economy that exist in significant numbers that match the abilities of Mr. Delegans,  
2 given his limitations. Thus, the Court finds the ALJ did not err in assessing Mr.  
3 Delegans' residual functional capacity and the ALJ properly identified jobs that  
4 Mr. Delegans could perform despite his limitations.

### 5 **VIII. Conclusion**

6 Having reviewed the record and the ALJ's findings, the Court finds the  
7 ALJ's decision is supported by substantial evidence and is free from legal error.

8 Accordingly, **IT IS ORDERED:**

9 1. Plaintiff's Motion for Summary Judgment, **ECF No. 16**, is **DENIED**.

10 2. Defendant's Motion for Summary Judgment, **ECF No. 22**, is

11 **GRANTED.**

12 3. Judgment shall be entered in favor of Defendant and the file shall be

13 **CLOSED.**

14 **IT IS SO ORDERED.** The District Court Executive is directed to enter this Order,  
15 forward copies to counsel and **close the file**.

16 **DATED** this 23rd day of October, 2017.

17  
18 s/Robert H. Whaley  
19 ROBERT H. WHALEY  
20 Senior United States District Judge